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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,222	09/26/2003	Hemanus Gerhardus Jozef Lansink Rotgerink	35909-TBD	6824

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EXAMINER	
NGUYEN, CAM N	
ART UNIT	**PAPER NUMBER**
1754	

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/670,222	LANSINK ROTGERINK ET AL.	
	Examiner	Art Unit	
	Cam N Nguyen	1754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1 136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09/26/03 (a continuation of 09/971,668)*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *26 September 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *09/26/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. Claims 1-21 of this application conflict with claims 1-21 of Application No. ***09/971,668***. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Priority

4. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

5. The abstract of the disclosure is objected to because: it is not limited to a single paragraph and employs the British form, "characterized". It is suggested that applicants change it to --characterized--. Correction is required. See MPEP § 608.01(b).

6. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Objections

7. Claims 1-21 are objected to because of the following informalities:

The claims use the phrase "consisting mainly of", which is unclear as to whether open or closed language is intended. It is suggested that applicants change to --consisting of--, --comprising--, or –consisting essentially of--. The claims also use the British form, "characterized". It must be changed to –characterized--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112 (Second Paragraph)

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. Claim 1, line 1, "0.5-10 parts by weight" is unclear as to what is being referred to with respect to the basis of the claimed ratio. Thus, renders the claims vague and indefinite.

B. Claim 1 recites the limitation "the support preparation method" in line 3-4. There is insufficient antecedent basis for this limitation in the claim.

C. Claims 4-7 recite the limitation "the titania and/or zirconium dioxide domains" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102(b)/103

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 1-2, 4-9, & 11-21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Trubenbach et al., "hereinafter Trubenbach '898", (US Pat. 5,935,898).

Regarding claims 1-2, Trubenbach '898 discloses a catalyst support comprising 15-70% of active inorganic powder particles of SiO_2, TiO_2, and ZrO_2 (see col. 8, ln 22-23, 35, 40, & 44-45) including calcination (see comparative Examples C-E).

Regarding claims 4-7, Trubenbach '898 discloses a mean particle size of less than 1 micron (see col. 3, ln 25-26).

Regarding claims 8-9, 11-12, & 15-16, Trubenbach '898 discloses pyrogenic SiO_2, TiO_2, and ZrO_2 (see col. 1, ln 20).

Regarding claims 13-14 & 17-18, Trubenbach '898 discloses producing by precipitation (see col. 9, ln 59).

Regarding claims 19-20, Trubenbach '898 discloses calcining at 800-1100 degrees Celcius (see comparative Examples A, C, and D, and Example 13).

Regarding claim 21, Trubenbach '898 discloses 15-70% inorganic acid (see col. 2, ln 35 & 64), including H_3PO_4 (see col. 7, ln 32).

12. Claims 1-3 & 8-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tamura et al., "hereinafter Tamura '650", (US Pat. 5,840,650).

Regarding claims 1-2, Tamura '650 discloses a catalyst support comprising silica, titanium, and calcining (abstract).

Regarding claim 3, Tamura '650 discloses silica as siliceous material and a ratio of 1:20 titanosiloxane to siliceous material (see col. 3, ln 30-33) and 1.5% titanium (see claim 5), the balance of which is 98.5%.

Regarding claims 8-9 & 11-18, Tamura '650 discloses precipitated and pyrogenically produced silica and silica-zirconia (see col. 3, ln 50-51 & 57-64), and zirconia is claimed alternately with titania.

Regarding claim 10, Tamura '650 discloses silica gel (see col. 3, ln 51).

Regarding claims 19-20, Tamura '650 discloses calcination at 500-900 degrees Celcius (see col. 5, ln 60-64).

In the event any differences can be shown for the product of the product-by-process claims 1-21, as opposed to the product taught by Trubenbach or Tamura, as outlined above, such differences would have been obvious to one of ordinary skill in the art at the time the invention was made as a routine modification of the product in the absence of a showing of unexpected results; see also *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985).

Continued Examination Under 37 CFR 1.114

13. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

14. Claims 1-21 are originally pending in the application. Claims 1-21 are rejected. No claims are allowed.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Cam Nguyen, whose telephone number is (571) 272-1357. The examiner can normally be reached on M-F from 9:30 am. to 6:00 pm.

The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to telephone number (571) 272-1700.

Cam Nguyen

Primary Examiner

Art Unit: 1754

Nguyen/cnn CN

June 01, 2004